NO: 88-1578

Supreme Court, U.S.
F.I.L.E.D
MAR 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1988

RODRIGO ALONSO, ET AL.,
PETITIONERS

v.

LEO'S QUALITY FOODS, ET AL.,
RESPONDENTS

Appendix to

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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[ORDER DENYING REHEARING IN COURT OF APPEALS]

(filed 12/21/88)

NOT FOR PUBLICATION
United States Court of Appeals
for the Ninth Circuit

No. 87-6501
DC #CV-85-3258-JSL
ORDER

RODRIGO ALONSO; MARIA ALONSO; FRANCISCO BARBA; JOSE BECERRA; HECTOR BENAVIDES; ANTONIA BURCIAGA, et al.,

Plaintiffs-Appellants,

vs.

LEO'S QUALITY FOODS; WHITTINGTON COMPANY; FOOD AND COMMERCIAL WORKERS LOCAL 274; JULIUS BELL; ROBERT BELL; ARLENE BELL, et al.,

Defendants-Appellees.

Before: WRIGHT, NORRIS, and WIGGINS, Circuit Judges.

The Petition for Rehearing has been considered and is denied.

[JUDGMENT IN COURT OF APPEALS]

JUDGMENT

United States Court of Appeals
for the Ninth Circuit

No. 87-6501
DC #CV-85-3258-JSL

RODRIGO ALONSO; MARIA ALONSO; FRANCISCO BARBA; JOSE BECERRA; HECTOR BENAVIDES; ANTONIA BURCIAGA, et al.,

Plaintiffs-Appellants,

vs.

LEO'S QUALITY FOODS; WHITTINGTON COMPANY; FOOD AND COMMERCIAL WORKERS LOCAL 274; JULIUS BELL; ROBERT BELL; ARLENE BELL, et al.,

Defendants-Appellees.

APPEAL from the United States District Court for the Central District of California

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is AFFIRMED

Filed and entered November 25, 1988

[MEMORANDUM DECISION OF COURT OF APPEALS]
(filed 11/25/88)

NOT FOR PUBLICATION
United States Court of Appeals
for the Ninth Circuit

No. 87-6501
DC #CV-85-3258-JSL
MEMORANDUM*

RODRIGO ALONSO; MARIA ALONSO; FRANCISCO BARBA; JOSE BECERRA; HECTOR BENAVIDES; ANTONIA BURCIAGA, et al.,

Plaintiffs-Appellants,

vs.

LEO'S QUALITY FOODS; WHITTINGTON COMPANY; FOOD AND COMMERCIAL WORKERS LOCAL 274; JULIUS BELL; ROBERT BELL; ARLENE BELL, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Central District of California
District Judge J. Spencer Letts, Presiding

[Argued and Submitted October 31, 1988 - Pasadena, CA]

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Before: WRIGHT, NORRIS, and WIGGINS, Circuit Judges.

We consider whether the union breached its duty of fair representation by failing to file a grievance within the time limit specified in the Collective Bargaining Agreement and whether it conducted an adequate investigation.

BACKGROUND

The United Food and Commercial Workers Union, Local 274 AFL-CIO, represented the employees of Leo's Quality Foods, Inc. In November 1984, Fredric Richman, Leo's attorney, informed Donald Holeman, president of Local 274, that Leo's was being sold to Stephen Whittington, would close down business and discharge its employees effective that day and that the new company would not likely hire any of Leo's employees.

Holeman scheduled a union membership meeting for Monday, November 19, and made

an appointment with the attorney, Glen Rothner, to discuss the closure and sale of Leo's. At the union meeting Holeman relayed the information given to him by Richman. He told the members that the union was investigating a claim that Whittington's operation was Leo's alter ego and that it would notify them if a grievance was filed. Holeman told the employees that the sale did not appear to be a sham to avoid th union contract, explained their rights under the CBA and encouraged them to apply for jobs with the new company. Holeman and Rothner then met to discuss what action the union might take.

The union filed no grievance. Appellants claimed that it breached its duty of fair representation by failing to file a timely grievance and failing to conduct an adequate investigation. The district court granted summary judgment

in favor of the union. We review de novo. Moore v. Bechtel Power Corp., 840 F.2d 634, 636 (9th Cir. 1988).

Duty of Fair Representation Analysis

In exchange for a union's exclusive bargaining rights, the Supreme Court imposes a duty of fair representation. Id. at 636. The union breaches its duty when its acts are arbitrary, discriminatory or in bad faith. Vaca v. Sipes, 386 U.S. 171, 190 (1967).

A. Failure to File a Grievance

To determine whether the union breached its duty, we ask whether the act in question involved the union's judgment or whether it was procedural or ministerial. Moore, 804 F.2d at 636. If the union exercised its judgment, then it breaches its duty of fair representation only of the conduct was discriminatory or in bad faith. If the act in question was procedural or ministerial, the union

breaches its duty only if the conduct was arbitrary. Id.

Appellants characterize the union's failure to file a grievance as a ministerial omission subject to the arbitrary standard.1/ They rely on Dutrisac v. Caterpillar Tractor Co., 749 F.2d 1270 (9th Cir. 1983), where we classified the union's failure to file timely a meritorious grievance as

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1 We have found arbitrary conduct when the union failed: to disclose its decision not to submit an employee's grievance to arbitration when she was deciding whether to accept a settlement offer from her employer, Robesky v. Quantas Empire Airways, Ltd., 573 F.2d 1082, 1091 (9th Cir. 1978); to consider individually the grievances of employees where the factual and legal differences among them were significant, Gregg v. Chauffers, Teamsters & Helpers Union Local 150, 699 F.2d 1015, 1016 (9th Cir. 1983); to permit employees to explain the events which led to their discharge before deciding not to submit their grievances to arbitration, Thenorio v. NLRB, 680 F.2d 598, 601 (9th Cir. 1982) and; to notify the employer of an employee's steward status, Galindo v. Stoody, Co., 793 F.2d 1502, 1515 (9th Cir. 1986).

arbitrary conduct and found a breach of the unon's duty. Id. at 1273-74. Their reliance is misplaced.

The arbitrary standard is inapplicable where the union evaluates a claim, finds it meritless and thereafter fails to perform a ministerial act. Eichelberger v. NLRB, 765 F.2d 851, 855 n.7 (9th Cir. 1985).

> In all cases in which we found a breach of the duty of fair representation based on a union's arbitrary conduct, it is clear that the union failed to perform a procedural or ministerial act, that the act in question did not require the exercise of judgment and that there was no rational and proper basis for the union's conduct... We have never held that a union has acted in an arbitrary manner where the challenged conduct involved the union's judgment as to how best to handle a grievance....

Peterson v. Kennedy, 771 F.2d 1244, 1254 (9th Cir. 1985), cert. denied, 475 U.S. 1122 (1986).

A union exercises its judgment when it evaluates a grievance and decides not to pursue it. We may not deem a union's failure to file arbitrary simply because it evaluated incorrectly the merits of a grievance. Id. at 1254.

The union here considered a number of grievances, including the possibility of an alter ego claim, within the time period specified in the CBA and decided not to pursue any charge.2/ When attorney Rothner and Holeman met on the first business day after the sale, they believed there was insufficient information to establish an alter ego charge. They discussed filing grievances under Article XXIX of the CBA, examined the possibility of bringing an unfair labor practice charge with the National

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2 Under section 2 of the CBA, an employee has three days to file a written grievance and under section 3 he or she has ten days.

Labor Relations Board and considered asserting successorship rights. Rothner warned against aggressive union action fearing that the new employer might hire fewer employees. They decided within the time specified in the CBA not to file any grievance.

When a union, as here, exercised its judgment by deciding not to pursue a meritless grievance and not to aggravate a new employer, appellants prevail only if the union acted in bad faith or with discrimination. See Peterson, 771 F.2d at 1254. Disagreement between a union and a member standing alone is not evidence of bad faith even when the grievance has merit. Moore, 804 F.2d at 637. Appellants presented no evidence of bad faith or discrimination. Without such evidence, we accept the union's judgment and find no breach.

B. Failure to Investigate Adequately

Appellants contend that the union breached its duty by conducting a perfunctory investigation. A union acts arbitrarily when it ignores a meritorious grievance or handles it in a perfunctory manner. Vaca, 386 U.S. at 191. It must perform at least a minimal investigation, the thoroughness of which varies with the circumstances. Evangelista v. Inlandboatmen's Union of Pac., 777 F.2d 1390, 1395 (9th Cir. 1985). Although special care must be exercised when handling a discharge grievance, extensive investigation is unnecessary where additional evidence would not have altered the union's decision. Id. at 1395-96. Refusing to process a meritless grievance, cannot alone be deemed arbitrary. Eichelberger, 765 F.2d at 857 n.10

The union did not ignore a meritorious grievance or handle it in a perfunctory manner. See, e.g., id. (president's reading of letter several times considered sufficient investigation). After Holeman and attorney Rothner met, Rothner researched the possibility of filing an alter ego grievance and of asserting rights under the CBA. He reviewed the CBA, talked with his colleagues, and discussed the transaction with Leo's attorney Richman.

Appellants complain that the union failed to obtain transactional documents, did not return phone calls and did not investigate the identity of supervisory and management personnel.3/ Rothner discussed the transactional documents with Richman and later found them to be as described. Examining the

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3 Appellants also complain that the union did not keep notes. This is meritless.

documents would not have influenced materially the union's judgment. See Peterson, 771 F.2d at 1255. Although appellants called the union they did not allege they had information which would have altered its decision. The union need not obtain explanations from every grievant to satisfy its duty. Evangelista, 777 F.2d at 1395. The union did ask appellant Lemus to investigate the identity and number of employees hired by Whittington. Further investigation would not have aided the union.

Because we find no breach, we do not decide whether in a duty of fair representation claim a court may award emotional distress damages or whether there is a right to jury trial.

AFFIRMED.

[SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW]
(filed 9/25/87)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 85-3258 JSL (Px)
SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

RODRIGO ALONSO, et al.,

Plaintiffs,

vs.

LEO'S QUALITY FOODS, et al.,

Defendants.

The court believes that the factual bases of its ruling of June 1, 1987 and the legal reasoning which led thereto are adequately set forth in the transcript of the proceeding. For that reason, the Court did not address these matters by separate memorandum.

Because there seems to be a lack of agreement as to the adequacy of the transcript for its intended purpose,

these Supplemental Findings of Fact and Conclusions of Law are stated and published pursuant to Federal Rules of Civil Procedure 60(a).

1. It would not have been practical, in light of the complexity of the issues involved, for the plaintiffs to pursue individual grievances.

2. Advice given by Union officials to the plaintiffs to leave the matter in the hands of the Union was therefore sound and did not, in and of itself, breach the Union's duty of fair representation.

3. There is no substantial evidence that the Whittington/Leo's transaction was intended as a sham or that it was entered into for the purpose of avoiding the obligations of the collective bargaining agreement.

4. The description given by counsel for Leo's to the Union counsel was given

in good faith and fairly described in the transaction as he understood it. Counsel was justified in relying on this description.

5. The reliance by counsel upon the description given to him of the transaction and the legal examination done by him to ascertain whether the transaction violated the rights of any Union members were reasonable in the circumstances.

6. The conclusion reached by the Union lawyer that successful claims could not be made against Leo's or Whittington under the collective bargaining agreement or otherwise under applicable law was reasonable.

7. The failure of the Union to pursue any such claim did not violate the duty of fair representation owed by the Union to the plaintiffs.

8. The Court's own view that such a claim, if made, would have been successful depended upon factual and legal analyses which would have been difficult for the Union lawyer to duplicate, without information he did not have and expertise not readily available to him.

9. Based upon the foregoing, the Union did not breach its duty of fair representation to the plaintiffs or otherwise violate any legal duty owed to them.

Dated: September 22, 1987

/s/
J. Spencer Letts
United States District Judge

[JUDGMENT IN DISTRICT COURT]
(filed 6/24/87)

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 85-3258 JSL (Px)
JUDGMENT

RODRIGO ALONSO, et al.,

Plaintiffs,

vs.

LEO'S QUALITY FOODS, et al.,

Defendants.

The court having fully considered the arguments of counsel for both

parties, both written and oral, and having determined that there is no material factual dispute, and that the Union did not breach its duty of fair representation, as a matter of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' remaining causes of action be dismissed, with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of this Court shall enter an Order dismissing Plaintiffs' complaint.

DATED: June 22, 1987.

/s/
THE HONORABLE J. SPENCER LETTS
UNITED STATES DISTRICT JUDGE

[REPORTER'S TRANSCRIPT OF HEARING ON RENEWED SUMMARY JUDGMENT MOTION]
(6/1/87)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE J. SPENCER LETTS, PRESIDING
UNITED STATES DISTRICT COURT JUDGE

CASE NO. CV 85-3258 JSL

RODRIGO ALONSO, et al.,

Plaintiffs,

vs.

LEO'S QUALITY FOODS, et al.,

Defendants.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

MONDAY, June 1, 1987
LOS ANGELES, CALIFORNIA

UNION'S RENEWED MOTION FOR SUMMARY JUDGMENT

TERRY KRAMER, CVR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
312 NORTH SPRING STREET
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LOS ANGELES, CALIFORNIA, MONDAY, 6/1/87

2:00 O'CLOCK P.M.

THE CLERK: CV-85-3258-JSL, Rodrigo Alonso, et al., versus Leo's Quality Foods, et al.

MR. MARGOLIS: Good afternoon, Your Honor. Mike Margolis for the Plaintiffs; that's M-a-r-g-o-l-i-s.

MR. DOHRMAN: Good afternoon, Your Honor. I'm Robert M. Dohrmann; with me is Terri A. Tucker from Schwartz, Steinsapir, Dohrmann & Sommers, appearing for the defendant union.

THE COURT: Good afternoon. I think this one is probably the end of the road, so with that I'll tell you why.

MR. MARGOLIS: Well, I hope, Your Honor, we can talk about it a bit.

THE COURT: Well, we talked about it last time, and that's why we had another time, but I think this one is it. You are very persuasive, and you are very knowledgeable at argument. I say that as a compliment. I assume you take it that way. At argument you're able to produce doubts that have a tendency not to survive the papers. This time I think

the papers are relatively clear. I think the papers -- notwithstanding the way you've characterized the things that have been added to them, that you have not controverted them. And I think that the job the union did in making up its mind, whether and how to pursue this thing, was a substantive job, and was, while I think in error, still not -- not an inadequate effort to get the right answer, and I don't think it was a ministerial error. There's no suggestion in the papers I've reviewed that it was a ministerial error not to file a grievance. It was a conscious decision to go about it in a different way, if and when such time, if and when review and subsequent events made it look like it would be a successful grievance. I don't think -- I didn't then, I don't think now -- that just everybody, lawyers included, good lawyers included, would have had to see

that complex of contracts the way I see them. And I am not critical of the effort, the decision to review the thing in the way it was reviewed, or the efforts that went behind it. It's not only that I'm not outraged by it, I'm not even critical of it.

MR. MARGOLIS: May I, Your Honor?

THE COURT: Yes; briefly.

MR. MARGOLIS: All right, Your Honor. Your Honor, it is now undisputed that the union specifically told the employees not to file grievances. Now, I understand that the union had offered an explanation, although I point out, Your Honor, that there's no evidence that that was in fact what the union did; it's simply argument of counsel. But the union took what was an unprecedented step as far as the record is concerned of instructing the employees not to file grievances, even though the union

followed a policy of encouraging even meritless grievances to be filed. Now having taken that step, Your Honor, we look to what the union then did. There is no evidence, despite the misleading footnote 3 on page 10 in the union's brief, reply brief. There's no evidence that a decision ever was made within the time limits of the grievance.

THE COURT: That's correct.

MR. MARGOLIS: Now, if a decision was not made within the time limits of the grievance, the contractual rights expired without a conscious decision. In other words, it's exactly a Dutrisac type of situation where regardless of whether there may be statutory rights under the National Labor Relations Act, Your Honor, the employees' contract rights were extinguished, completely and absolutely by the union's ministerial failure to file the grievance. The reason it was

ministerial, Your Honor, is that no decision had been made as of the time that the grievants' time limits expired.

THE COURT: I don't read the papers that way: sorry.

MR. MARGOLIS: Excuse me, Your Honor?

THE COURT: I don't read the papers that way.

MR. MARGOLIS: May I ask whether Your Honor is disagreeing about whether the time had expired before --

THE COURT: No; no; no. It's clear the papers are clear about that.

MR. MARGOLIS: It's clear that the union had no decision before the time expired?

THE COURT: No: no; no. It is clear, I believe in the papers -- and I don't see how they can make it much more clear -- that a conscious decision was made not to decide --

MR. MARGOLIS: Let me address that, your Honor. The only evidence to which the union points about the time at which that decision was made was the text accompanying footnote 3 on page 10 of their reply brief, where they say that Mr. Rothner completed his investigation within the 10-day time limit. However, the footnote is not a cite to the record, it's a cite to a portion of the record where Mr. Rothner --

THE COURT: And, indeed, I didn't pay attention to that particular one.

MR. MARGOLIS: There is no other evidence of the time in which the --

THE COURT: I think M. Rothner's affidavit, declaration, is evidence of that. Let me tell you what I think.

MR. MARGOLIS: All right, Your Honor.

THE COURT: And you're going to have a lot of trouble persuading me otherwise. These people -- by the case that you've

made, and indeed by my own observation -- these people were not individually able to persuade on a grievance basis, weren't likely to be able to pursue effectively on a grievance basis, this particular kind of a claim. If it was going to be a good claim, it was going to be a good claim on principles that were not going to be easily understood by this group of people. I find it not at all surprising, nor at all subject to criticism, that while they were looking into that they were saying to the individual, "If true, don't file a grievance, because there isn't any way for you to pursue it. The union is going to have to do it, and we'll have to make our decision." I think it's also apparent from the papers that the union then said, "We can't do it on that kind of a time frame, either, and we're going to want to have, before we decide whether to extend our resources

and then do the sort of things that they would have to do, we're going to want to have some subsequent information; we're going to want to know what happened in fact to production; we're going to want to know what happened in fact to the number of employees; we're going to want to have made the case better than we're going to be able to make it in the 10 days." It appears to me, rather clear, that that kind if inquiry was made within the 10 days, and they decided that they didn't want to be going down that road because they couldn't get there in time. That does not strike me as an indefensible position. Not only is it not indefensible, in my judgment, it's probably correct. And they succeeded. In any practical sense they succeeded, vis-a-vis the employer, precisely because they did it that way.

MR. MARGOLIS: Succeeded, Your Honor? I misunderstand.

THE COURT: They survive summary judgment, and I believe ultimately succeeded against the employer. In other words, the decision made not to rush off into the arbitration, into the grievance kind of procedure, number one, not by letting the employees do it since there was no way they could pursue it on their own; number two, for the union not to get itself committed to that course was not, in my judgment, inappropriate. The fact that it was possible to have a success for the benefit of the employees after the fact suggests to me that it wasn't a bad decision to go that way. The fact that you did it rather than the union, and you got there because the union never did, simply suggests a better analysis by the people that wound up representing these employees individually than by the

union, if true. But I'm not at all critical of the way the union went at it. I just simply don't think they should be subjected to this case any more because I don't think they did anything wrong.

MR. MARGOLIS: You Honor, putting aside the ministerial question then, coming to the investigatory portion, and we follow through on the analysis of the case that Your Honor has adopted, then the issue is to what extent the union made an appropriate investigation into the alter ego question. Now, Your Honor, the union has admitted that the investigation conducted within the month before Mr. Holeman came back from vacation and Mr. Rothner reported to him, was insufficient to determine that question, because --

THE COURT: No. What it was, it was deficient on the face of it, to say that they shouldn't commit themselves to a

course of action that early, and which I agree --

MR. MARGOLIS: Which left open the question -- and Mr. Rothner has specifically testified to this -- that he advised Mr. Holeman that additional information should be whether there ought to be an affirmative duty to go out and get it, or at least that the union ought to be receptive to attempts to convey information regarding the alter ego situation; that is, after the mid December date. And it's undisputed that no move of any kind whatsoever was made to attain that additional information. In this regard, Your Honor, particularly to clarify the records, I want to point out two things. One is that the declaration submitted as Exhibit A to the Terri Trucker declaration, which is a National Labor Relations Board affidavit, is not signed under penalty of perjury,

so although it is competent as admission, it's not competent as evidence. However, in there it does admit, after talking to its attorney, there was no investigation of any kind by the union into the very facts which the attorney had instructed Mr. Holeman were dispositive of the issue, and as to which there was insufficient evidence at the time. Second, Your Honor, there's undisputed record evidence that my clients telephoned the union many, many times. Now Ms. Tucker has submitted a declaration saying that she reviewed phone logs; but, Your Honor, again we object to that as incompetent evidence. There's no foundation laid about the manner in which the phone logs were kept and so forth. Or in fact what it does do is raise the inference, in the absence of a declaration denying my client's testimony from the competent people, that

the union treated my people, calls from my people, differently from normal calls; they kept not messages, if in fact Ms. Tucker's review was of the appropriate documents. But what this establishes is that, first, the union did nothing affirmative to obtain the information which its own attorney said was necessary to evaluate the situation. Second, the union put up an absolute roadblock to any information from my clients by refusing to contact with them. And third, although the union had at least one union member actually at work at the post-sale facility, the union never made any inquiry of him regarding what the situation was as far as the relevant criteria; that is, questions such as continuity of supervision, continuity of business enterprise, so on and so forth. So even if it were true that missing the grievance deadline was of no moment,

which of course we dispute, by the union's own admissions it failed to do exactly what it's own attorney instructed it it had to do in order to evaluate the situation appropriately. I take it, Your Honor, I've not persuaded you.

THE COURT: No. I won't take anybody's time to make much of a record of this, nor do I do it for the purpose of making a record. I prefer to be understood. As I understand the analysis done, the analysis done was that the things in the documents which were represented to be true, and has turned out to be true, suggested that the sale for purposes of successor clauses was legitimate; that the analysis that ultimately led me to conclude that that wasn't true -- I'm not critical of the effort done in that regard. So then you have them saying, the lawyers saying, "You can't do it now. If you're ever

going to attack that, you've got to do it later. You've got to do it by way of subsequent evidence, if any." I don't find on the strength of this record, an affirmative duty on the part of the union to do more than it did do, vis-a-vis trying to establish that without some color of reason to believe it. And the only color of reason to believe what I've heard is the reason to believe that would have followed from these plaintiff's telephone calls as to those subsequent events, it true and if they had that information. It is not clear that that's the information they were calling about. And even if it were, it's not clear to me that that would represent a failure of duty by the union. The threshold consideration, as I understood him, was the deal as a deal is okay, if they don't screw it up with later actions. You're not going to have anything to argue

about, so don't start fighting it right now. But if they screw it up later, then they may have something to argue about. That's what I understood from the papers, the advice given to be. And I don't think what they did or failed to do after the fact about following that up amounts to the kind of conduct that would breach the duty of fair representation.

MR. MARGOLIS: You Honor, I don't want to waste the Court's time, but I perceive what may be an important -- I don't mean to say misunderstanding of what the threshold question was -- but the union's investigation was solely of the transaction.

THE COURT: I understand.

MR. MARGOLIS: It had nothing to do with the facts which are material to the alter ego issue. What was on the papers could hurt the company from an alter ego

standpoint, but was not going to be dispositive of the alter ego question.

THE COURT: Of course.

MR. MARGOLIS: It is not that any communications regarding the transaction or descriptions of the transactional documents would supply the material facts; it does not. There's nothing in the transactional documents that addresses the question of continuity of supervision; there is nothing --

THE COURT: And there has been no holding yet about that, because the holdings that had been made all went to transactional documents.

MR. MARGOLIS: Quite right, Your Honor. But because these issues, for example, continuity of actual operations, continuity of supervision, continuity of control of labor relations on a day-to-day basis, because these issues were not reflected and would not normally be

reflected in the transactional documents when the union limited its inquiry to the transactional documents on the theory that it intended to explore, or it was evaluating an alter ego issue, it didn't do --

THE COURT: I'm going to cut this off now.

MR. MARGOLIS: Very good, Your Honor.

THE COURT: I'll let you have the last word. It's got to be equally as short as this second to the last word. What I think is that you're advancing the bald proposition that the union is always on a duty of inquiry to subsequent fact, which it couldn't responsibly be expected to learn within the 10-day period. They're always on a duty of inquiry, positive inquiry, as to subsequent facts on a successor question. I simply don't see any law to affect that.

MR. MARGOLIS: I mean that only where, Your Honor, the union has taken it upon itself to take away from the employees by specific instructions their own individual right to grieve.

THE COURT: I understand that, and for the reasons that I said I don't agree with it.

MR. MARGOLIS: Then my last point is, Your Honor, regarding discovery, I assume that Your Honor has already evaluated the question.

THE COURT: Yes.

MR. MARGOLIS: But there are lots of documents identified in the various depositions regarding, for example, the timing of this and that; there is a lot of discovery yet to be done with respect to policies and practices. As we pointed out, each of the policies of the union, with respect to grievance handling that we can identify, was not followed. It

suggests that additional discovery regarding those policies, which has not occurred before this date only because of scheduling problems regarding depositions, would be fruitful in showing those kinds of breaches. Also, Your Honor, with respect to the alter ego question, but I take it my 56(f) is denied, too?

THE COURT: Yes.

MR. MARGOLIS: Very good, Your Honor.

THE COURT: Thank you.

MR. DOHRMANN: Your Honor, we filed and served an order; has the court come to a conclusion whether that order is in sufficient form to file?

THE COURT: I don't know that I've heard any objections to it. I'll give you an opportunity to object. And to be honest, I have not reviewed it.

MR. DOHRMANN: Thank you.

THE COURT: I think I looked at it, but I assumed he might have some objections.

MR. DOHRMANN: You Honor, would you permit me quickly to close the record on this moment by saying something that Mr. Margolis will agree with, which is, after 12 years of handling these kinds of cases for unions, I have not seen a more dedicated or innovative lawyer than Mr. Margolis has been in this proceeding.

MR. MARGOLIS: Thank you, Mr. Dohrmann.

THE COURT: I hope I said something that sounded like that. I've been very impressed. Otherwise, we wouldn't still be here.

MR. MARGOLIS: Your Honor, could we at least send you a bill for educating on this? May I have 30 days to review the order, Your Honor?

THE COURT: Sure.

MR. MARGOLIS: Or 15 days?

THE COURT: Sure.

CERTIFICATE

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPTION, REPORTED TO THE BEST OF MY ABILITIES, OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

6/3/87
DATE

TERRY KRAMER
CERTIFIED
VERBATIM
REPORTER

[COLLECTIVE BARGAINING AGREEMENT]

[EXCERPTS]

ARTICLE I

(RECOGNITION OF THE UNION)

Section 1. The Employer recognizes the Union as the representative for purposes of collective bargaining as to wages, hours and working conditions on behalf of all production workers except Operating Engineers, Teamsters, Office and Clerical Workers, Non-working Foreman, and any and all supervisory employees who do not perform any duties covered by this Agreement.

Section 2. The Employer agrees to prominently display the Union Shop Card at all times in one or more places.

Section 3. This is mutually agrees that only employees doing work that comes under the jurisdiction of Provisions House Workers Union Local No. 274, AFL-

CIO, shall be allowed to perform work as provided for in this Agreement.

ARTICLE XXIII

(GRIEVANCE AND ARBITRATION)

[Sections 2-4 only]

Section 2. Employees shall not be suspended, dismissed, demoted or disciplined without just and sufficient cause. The maximum time of a suspension shall not exceed the balance of the work week in which it occurs, plus one additional work week. Any employee who believes he has cause shall file a written grievance with the Company and the Union within (3) working days after the action taken by the Employer.

Section 3. All grievances of an employee or the Union, except those specified in paragraph 2 above, which allege a violation of any provision of this Agreement shall be filed in writing with the Employer and the Union within

ten (10) days after the event giving rise to the grievance. The parties hereto shall exercise every amicable means to settle or adjust all grievances filed within the time limits set forth in this Article. In the event of a failure to accomplishthe settlement or adjustment thereof within five (5) working days after the filing of any grievance with the Employer, The Union may by written notice to the Employer, request that the matter be submitted to arbitration. Such notice shall be delivered to the Employer as soon as possible, and in any event no later than twenty (20) working days after the filing of the written grievance unless such time is extended in writing by the employer.

Section 4. All grievances and requests for arbitration not filed with the Employer in the time Limits specified in this Agreement, or as mutually

extended or waived, shall be barred for all purposes. The Arbitrator shall not have the authority to ignore or execute any failure to comply with the time limits set forth is this article no matter what reason is advanced for any such failure, and any untimely grievance shall not be eligible for further consideration.

ARTICLE XXIX

(CHANGE IN OWNERSHIP)

Section 1. If an Employer hereunder sells, leases or transfers his business or any part therof, whether if be voluntary, involuntary, or by operation of law, it shall be his obligation to advise in writing the purchaser, lessee or transferee of the existence of this Agreement, of the requirement of this provision in particular, and of the names on the employees currently holding employment rights under this Agreement.

Section 2. Such purchaser, lessee or transferee shall be bound fully by the terms of this Agreement and shall be obligated to pay the wages, vacations, fringes, sick and accident benefits and comply with all other conditions of this Agreements effect at the time of the sale, lease or transfer. Such purchaser, lessee or transferee shall be obligated to continue this Agreement and the employment of those employed under this Agreement, including those subject to recall. The Union will similarly continue to be bound.

[LEO'S/TWC LEASE/SUBCONTRACTING AGREEMENT] [EXCERPTS]

[Lease Rider 3.1]

3.1 Term. The text of this Lease shall be for six (6) months commencing on November 15, 1984 and ending on May 16, 1985 with a series of five (5) option periods each for an additional six (6) month period to be mutually exercised by Lessee and Lessor prior to thirty (30) days before the expiration of the then current six (6) month term unless sooner terminated pursuant to any provision hereof.

[Subcontracting Contracts]

AGREEMENT

THIS AGREEMENT is made and entered into as of the 12th day of November, 1984, by and between LEO'S QUALITY FOODS, a California corporation, 1830-1850 West Slauson Avenue, Los Angeles, California 90047 (hereinafter referred to "LEO'S")

and THE WHITTINGTON COMPANY, a California corporation, 18301850 West Slauson Avenue, Los Angeles, California 90047 (hereinafter referred to "WHITTINGTON"), with respect to the following facts:

A. LEO'S is engaged in the business of selling processed meat and food products, which are prepared to the specific requirements of its customers.

B. WHITTINGTON is engaged in the business of preparing, cooking, slicing and packaging meat and food products for customers, and is sometimes known as a "contract manufacturer".

C. LEO'S requires assurance that its requirements for products will be provided by WHITTINGTON, and desires to utilize WHITTINGTON under the terms and conditions contained herein for the manufacture, preparing, cooking, slicing and packaging of the products contemplated by this Agreement.

D. Based upon the mutual assurances set forth herein, WHITTINGTON is willing to provide all of LEO'S requirements of Products, as defined, herein, provide it is the exclusive producer of the LEO'S Products contemplated by this Agreement, and LEO'S is willing to purchase all of the products produces pursuant to this Agreement on the terms set forth herein.

* * *

2. Term.

The term of this Agreement shall commence as of November 15, 1984, and shall continue for a term of six (6) months unless sooner terminated under the provisions of this Agreement. This Agreement, unless either party serves notice of intention to terminate this Agreement thirty (30) days prior to its expiration, shall remain in full force until either party shall serve thirty

(30) days notice on the other of its intention terminate this Agreement.

[TERMINATION NOTICE (11/16/84)]

LEO'S QUALITY FOODS

Reply to: Post office Box 54484

Terminal Annex, Los Angeles, California 90054

Telephone (213) 295-3251

TO ALL LEO'S EMPLOYEES:

As all of you know, Leo's Quality Foods has been suffering severe financial difficulties for the past five years.

I can no longer continue this struggle and have sold Leo's to a new company who will form its own business.

The plant is officially closed as of November 16, 1984, at which time I will no longer have any interest in the business. All production employees are terminated effective this date.

I am advised by The Whittington Company, which will begin operations, that it will welcome applications for employment submitted by former Leo's employees. If

you wish to submit an application or inquiry about employment opportunities, you should contact The Whittington Company directly at 213/265-7745.

I thank all of you for your loyalty and wish you well.

[Spanish Translation Omitted]

JULIUS BELL

[DECLARATION OF GLENN ROTHNER]

I, Glenn Rothner, declare:

1. [Identification] I am an attorney admitted to practice before this Court, and a member of Reich, Adell & Crost, counsel to defendant United Food and Commercial Workers Union, Local 274, ALF-CIO & CLC ("Local 274") in this action. This law firm has represented Local 274 since June 1984. I have been a practicing attorney since 1975, and during that time have specialized exclusively in the representation of public and private sector labor unions.

2. [Notice of Leo's Sale] On November 16, 1984, I received a telephone call from Donald C. Holeman, Local 274's president. Holeman stated that he had met that morning with Fredric Richman, a prominent management labor law attorney, who represented Leo's Quality Foods, Inc. ("Leo's"). I was previously aware that

Leo's was party to a collective bargaining agreement ("Agreement") with Local 274. Holeman told me that the purpose of his meeting was Richman's announcement that Leo's was being sold, and all of its production employees terminated, effective that day. Holeman asked to meet with me concerning the ramifications of the sale. We scheduled the meeting for 1:00 p.m. on the following Monday, November 19, 1985, at my office.

3. [Meeting With Holeman] In our November 19, 1985, meeting, Holeman and I discussed available legal options in light of the Leo's sale. Holeman was interested in investigating whether the sale was in fact an arms' length transaction or whether Leo's was merely establishing an alter ego which would be obligated to abide by the agreement. He reported the information given to him by

Fredric Richman the previous Friday, particularly that Julius Bell, the long-time owner of Leo's, was leaving the business altogether. He mentioned the name Steve Whittington, whom Richman had identified as the primary purchaser. I do not recall any other specific information that Holeman relayed to me; rather, he asked me to contact Fredric Richman directly to discuss the structure of the sale.

Holeman and I also discussed possible legal action under the Agreement. Holeman had brought with him a copy of the current Agreement, and I looked at the successorship clause found in Article XXIX. I gave Holeman my opinion that Article XXIX was a relatively weak successorship clause. Holeman knew, and I reiterated, that such a clause did not have effect of binding the purchaser the substantive terms of

the Agreement under the rule of Howard Johnson Co. v. Detroit Joint Executive Board, 417 U.S. 249, 94 S.Ct. 2236, 41 L.Ed.2d 246 (1974). We also discussed what duty the seller had under this successorship clause. I told him that the seller's only duty, under Article XXIX, was to notify the purchaser of the Agreement's existence, and that Leo's almost certainly would have complied with that requirement. Holeman said that Fredric Richman had verified that notice was given. I also suggested that pursuing a grievance against the seller alone might prove futile, in view of Leo's ongoing financial problems.

I also remember discussing general matters of strategy with Holeman. I told that him that, given the present state of successorship law, it is often best for a union to refrain from taking immediate action, while waiting for the

purchaser to hire its workforce. If the purchaser hires a majority of the former employees, the union can assert a duty to bargain based on the successorship doctrine. I told Holeman that in my experience, aggressive action by the union at the time of the sale often only alerts the purchaser to the union's claims and makes it unlikely that the existing work force will be retained.

Holeman and I agreed to talk again after I contacted Richman. Our meeting lasted approximately 40 minutes.

4.[Conversation With Richman] I talked to Fredric Richman later in the week beginning November 19, 1984, although I do not remember the exact day. I do remember that we exchanged phone messages several times before finally talking. I had known Richman professionally for at least five years, both in his capacity as a management

lawyer and a labor arbitrator. I had, and have, a good working relationship with Richman and consider himto be a lawyer of high ethical standards.

I asked Richman to describe to me the details of the Leo's sale, and told him frankly that local 274 was looking for evidence that the purchaser was and alter ego. Richman then described the structure of the sale, emphasizing that Julius Bell, who had owned almost all of the stock in Leo's, was selling out completely. He indicated that the Leo's corporate entity would continue to exist because of the goodwill attached to Leo's name and the need to preserve a loose-carry forward for tax purposes. The production end of the business, however, would be operated by a company owned solely by an individual he identified as Steve Whittington, who had never before been involved in Leo's.

Richman and I discussed the nature of the sale for approximately 15 minutes. I do not recall all of the details Richman describes, but by the end of the conversation I was thoroughly convinced that it would be futile to pursue a theory that Leo's and its purchaser were alter egos. Richman offered to let me see copies of the sale agreement and escrow documents. Because I had no reason to doubt his representations, I said that that would not be necessary.

5. [Report to Holeman] I called Holeman at Local 274's office to report on my discussions with Richman. The conversation took place in mid-December, after Holeman returned from vacation. I told him that, based on what Richman had told me, we could notbind the new entity to the Agreement as an alter ego. Based on that advice, Holeman decided to follow the strategy we had discussed in our

earlier meeting: to monitor the new company's hiring of employees and, if possible, to assert its duty to bargain. Barring that, Local 274's only option was to organize the new operation. This conversation lasted approximately 10 minutes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 10th day of January, 1986, in the County of Los Angeles, State of California.

/s/

GLENN ROTHNER

[DEPOSITION OF GLENN ROTHNER] [EXCERPTS]

Page 121, Lines 12-21

Q. In there discussions, you must have had some notion in your mind of what the transaction was.

A. No. I had very little in mind. We were talking generally about the transaction. And this was ameeting at which my view of the purpose was to reorient Don to the extent he needed reorienting to the law in this area. And it was both his desire and my assumption we would have another discussion about this after I had had the opportunity to learn more about the transaction from Fred Richman.

Page 143, Lines 21-24

Q. You did not know when you met with Don Holeman on Monday the 19th whether there was any merit to a grievance, correct?

A. Correct.

[DEPOSITION OF DONALD HOLEMAN]

[EXCERPTS]

Page 115, Lines 4-8

Q. Did you then on November 16 go to Mr. Richman's office?

A. Yes.

Q. What time did you arrive?

A. I think I got there about 8:30.

Page 16, Lines 5-27

Q. You sat down and you exchanged greetings again. And the Mr. Richman said what?

A. What he said? He says, "Leo is closing today." This can't be word-for-word. Just the substance. "Leo is closing today. They're selling out to a guy named Steve Whittington. He's a fella that is connected with this Herbal Life of Nurtralife or something like that. Julie Bell is completely out of it. He's sick." Basically that's what

he told me. He just couldn't make it any longer.

Q. And did you respond?

A. Yeah. We discussed a few things. You know, I tried to find out what I could about Steve Whittington. I couldn't find out much other than he antiunion a hundred percent, and that he would be possibly operating and using Leo's name. Among other things, he was planning on maybe -- I was told that he was putting -- would put part of his vitamin operation in there. It didn't seem to be too clear what he was going into, any facets of the meat business such as meat thawing which I had never heard about. ...

Page 119, Lines 14-21

Q. What did he say about Whittington's attitude toward the Union?

A. Antiunion.

Q. Tell me as best you can what he said as closely as you can remember.

A. That he's strictly antiunion. He fully intends to operate this building -- this company nonunion.

Page 133, Line 16 - Page 134, Line 21

Q. Between the meeting with Richman and the meeting on the 19th with the employees, did you take any action with respect to Leo's?

A. I don't know what you mean by any action.

Q. Well, did you do anything that related to Leo's?

A. Yes. I did.

Q. Tell me what that is.

A. I called our attorney on Monday morning and asked for a meeting to discuss the situation which was set up for that afternoon, that Monday afternoon.

Q. What attorney was that?

A. Glenn Rothner.

Q. And did you meet with your attorney?

A. Yes.

Q. That was Monday morning?

A. Afternoon.

Q. Monday afternoon. Was that after the meeting with the employees?

A. Yes.

Q. Other than that telephone call between the meeting with Fred Richman on the 16th and the meeting with the employees on the 19th, did you do anything with respect to Leo's?

A. No.

Q. When did the meeting with the employees start on the 19th?

A. I believe it was around 10:00

Q. Who was present?

A. About 75 people from Leo's approximately and myself. ...

Page 143, Line 18-22

Q. Did you then meet your attorney that afternoon?

A. Well, I talked to him. I can't remember if I -- If I went over there or it was over the phone.

Page 144, Line 3 - Page 146, Line 13

Q. How long did your conversation with your attorney last?

A. I don't know. I don't recall. I'd say more that five minutes, less than an hour.

Q. Would you, to the best of your recollection, describe that conversation.

A. I told him of my meeting with Fred Richman, my meeting with the membership, and my desire to find out whether of not we felt an alter ego situation could exist of did exist, and asked him to check with Fred Richman to get any information he could in that

regard so that we could make a determination.

Q. Did you tell Mr. Rothner that Mr. Richman had told you that his understanding was that Whittington would not hire any Leo's employees because of their union status?

A. Well, I told him that this guy is going to try to operate nonunion and would probably not hire very many if any of the old employees, in my opinion.

Q. Did you relate to him what Mr. Richman had told you about what he knew about Mr. Whittington?

A. Yes. I did.

Q. Did you ask Mr. Rothner to consider whether proceedings could be brought against Whittington for failure to hire -- Excuse me -- refusal to hire Leo's employees?

A. I don't recall.

Q. Do you recall if Mr. Rothner suggested that that might be a possibility?

A. Well, he did -- Well, not at this particular meeting. He didn't.

Q. Did you take notes of your meeting or conversation with Mr. Rothner?

A. No.

Q. Do you recall now wether you were present with him or on the phone?

A. I can't recall for certain.

Q. Do you recall what Mr. Rothner said in response to your remarks?

A. Well, he said, yes, he would investigate it with Fred Richman.

Q. Can you recall anything else about that conversation?

A. No.

Q. Have we exhausted your recollection of it?

A. Yes.

Q. Are you aware of anything that would refresh your recollection?

A. No.

Q. After that conversation with Glenn Rothner, what was the next action you took with respect to Leo's?

A. I talked with Glenn Rothner again.

Q. When did that occur?

A. Oh, it would be some time after December 12th, shortly after -- December 12th actually would be after. The 12th, 13th, 14th, 15th, 16th. Around the 17th of November or shortly thereafter.

Q. Is that the 17th of December?

A. I mean December.

Q. Did he call you?

A. No. I called him, I guess. I don't know. He may have called me in between.

[DEPOSITION OF A. ED DOMINGUEZ]

[EXCERPT]

Page 76, Line 4 through Page 77, Line 9

Q. Have you ever told a disgruntled employee not to file a grievance?

A. No, sir. . . . I always tell a grievant to file a -- excuse me. I always tell any member to file a grievance.

Q. Why is that?

A. That's his rights.

A. Would you consider it unusual for a union business agent or officer to tell a disgruntled employee not to file a grievance?

A. Yes.

Q. Why is that?

A. Because the policy of the union is that we want any member whose rights have been violated to file a grievance.

Q. Even in situations where the union might not think the grievance has merit?

A. Absolutely.

Q. Are you aware of any occasion on which any Local 274 officer or agent ever told any disgruntled employee not to file a grievance?

A. No.

Q. Would you be surprised to hear that there ever was such an occasion?

A. Yes.

Q. And that is because it would be inconsistent with the union's policy?

A. Yes.

[LOCAL 274'S SUMMARY JUDGMENT REPLY BRIEF] [EXCERPT]

Page 7, Line 7-24

The Union certainly had the right to initiate a grievance on behalf of the affected employees (see Exhibit 1 to the holeman Deposition, Article XXIII, Section 3) and the discretion to seek to streamline the grievance and arbitration procedure by discouraging individual grievances from the approximately 100 Leo's employees, and instead opting for a single grievance, which, if viable, would resolve the common issue of job security upon the sale of the Company. There can be no question but that the Courts have given Unions full rein in deciding how to administer their grievance procedures. See, e.g., Petersen v. Kennedy, 771 F.2d 1244, 1254-55 (9th Cir. 1985), cert. denied, ___ U.S. ___, 106 S.Ct. 1642, 90 L.Ed.2d 187 (1986) ("We have never held

that a Union has acted in an arbitrary manner where the challenged conduct involved the Union's judgment as to how best to handle a grievance.") Choosing to file or not to file a single grievance on behalf of all the affected employees would certainly be the most efficient and expeditious means of regaining the Leo's employees' jobs if such a grievance were viable.

DECLARATION OF ANTONIO LEMUS

(EXCERPT)

Paragraph 2

2. I was born on January 26, 1936. I was hired by Leo's Quality Foods ("Leo's") in May 1967 as a production worker in the meat processing and packing plant located at 1830-1850 West Slauson Avenue in Los Angeles, California. I became a member of the Union ("Local 274") in November 1967. I remained a member of Local 274 and was continuously employed by Leo's for the following 17 years, until my employment was involuntarily terminated on November 16, 1984....

DECLARATION OF CARMEN SALAZAR

(EXCERPTS)

Paragraph 2

2. I was born July 21, 1936. I was hired by Leo's Quality Foods ("Leo's") in June 1963 as a production worker in the meat processing and packing plant located at 1830-1850 West Slauson Avenue in Los Angeles, California. I became a member of the Union ("Local 274") in November 1963. I remained a member of Local 274 and was continuously employed by Leo's for the following 21 years, until my employment was involuntarily terminated on November 16, 1984....

[DECLARATION OF BEATRICE ORKIS]

[EXCERPTS]

[Paragraph 2]

2. I was born on December 27, 1931. I was hired be Leo's Quality Foods ("Leo's") in September 1956 as a production worker in the meat processing and packing plant located at 1830-1850 West Slauson Avenue in Los Angeles, California. I became a member of the Union ("Local 247") in January 1957. I remained a member of Local 274 and was continuously employed by Leo's for the following 28 years, until my employment was involuntarily terminated on November 16, 1984....

[Paragraph 10]

10. The first time I realized that my job security had not been secured by the wage and benefit concessions was on November 16, 1984, when I was terminated without ant advance notice.

(a) I reported to work on November 16, 1984 at 6:30 a.m. All of the meat was packed by approximately 1:00 p.m., and none of my normal duties remained to be done. My immediate supervisor, Tom Serrano, told my co-workers and me that we could not go home, but he refused to explain why.

(b) Mr. Serrano Told us to stay in the packing room. I went to the door of the cook room, and I saw armed guards posted at various places. During my 28 years at Leo's, I had never seen an armed guard on the premises before (except for the normal guard at the gate to the street), and it made me very nervous. I thought something very serious must be happening to me and my coworkers, but nobody would explain what was going on.

(c) At approximately 2:30 p.m., Tom Serrano finally gave permission for us to go home. Along with a number of my

coworkers, I was escorted off the premises by several other armed guards. I still had not received absolutely no explanation about what was going on and was at this point extremely upset and uncertain about what kind of trouble I might be facing.

(d) When I approached the Leo's Gate, in the company of my coworkers, I saw the plant manager, Sergio Pieri, and his assistant, Butch Yokoi, handing envelopes to each employee who passed through the gate. As I passed through, I was given an envelope, but neither Mr. Pieri nor Mr. Yokoi would say anything to me.

(e) I opened the envelope after I had passed through the gate. The envelope contained a check and a letter from Julius Bell. The letter, a copy of which is attached hereto as Exhibit C, stated in English That Julius Bell had

"sold Leo's to a new company who will form its own business", that the plant was closed, and that I was terminated effective immediately.

PLAINTIFFS' INTERROGATORY RESPONSES

(EXCERPT)

Page 3, Line 10 through Page 4, Line 9

On November 19, 1984, all Plaintiffs except Gerardo Lopez, Pascasio Medina, and Luis Torres attended a meeting at the Union's hall at which Don Holeman was the principal speaker. All Plaintiffs who were present recall that Mr. Noleman stated that the Union was as surprised as the employees about Leo's move, that the Union had no specific information about what was going on except that the Whittington Company apparently was taking over Leo's, that Mr. Holeman thought there was little hope, but that Mr. Holeman would be meeting with the Union's attorneys to see if anything could be done the employees could rely on the Union to do it, and that the Union would keep the employees informed. All Plaintiffs who attended the meeting,

except Hector Benavides, Carrie Herbert, and Filiberto Martinez, heard Mr. Holeman asked the specific question whether the employees should file written grievances. (Many Plaintiffs specifically recall that it was Beatrice Orkis who asked the question in English; others recall only Spanish translation of a question asking whether written complaints or grievances should be filed and have no knowledge of which employee asked the question.) All Plaintiffs who were present at the meeting, except Hector Benavides, Carrie Herbert, and Filiberto Martinez, heard Mr. Holeman state that no employee should file a written grievance, because the Union was fully in charge of the situation and would take all action that could be taken to protect the employees. All Plaintiffs who attended the meeting left the meeting with the clear understanding that the Union would take

any action that could be taken to protect their rights and that the Union would keep the informed.